In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 985

ROBERT BENJAMIN BLAND, SR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Eastern District of Louisiana, petitioner was convicted of having received and concealed a stolen automobile which had been transported in interstate commerce, knowing the same to have been stolen (18 U.S.C. 2313). The court of appeals affirmed *per curiam* (Pet. App. 1a-3a).

Petitioner's sole contention is that his privilege against self-incrimination was violated by the instruction (Pet. 4-5) allowing the jury to infer knowledge that the car had been stolen from his unexplained possession of it four days following the theft. This Court and others have held, however, that this inference is a rational one, based upon experience. Thus, instructing the jury that they may draw the inference does not infringe Fifth Amendment rights. *E.g.*, *Rugendorf* v. *United States*, 376 U.S. 528, 536-537; *McNamara* v. *Henkel*, 226 U.S. 520, 524-525; *Wilson* v. *United States*, 162 U.S. 613, 620-621; *United States* v. *Winbush*, 428 F. 2d 357 (C.A. 6), certiorari denied, November 16, 1970 (No. 5668, this Term).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1970.

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